

**End-User-Licence-Agreement  
(EULA)  
of Cubeware GmbH, (Version: 01.07.2017)**

**1. Scope**

- 1.1 The Standard Terms and Conditions for Use of Software set out below shall apply to all contracts made by and between Cubeware GmbH (hereinafter: "Cubeware") and its contractual partners (hereinafter "Customer") for work in the form of consultancy services rendered by Cubeware to the Customer.
- 1.2 The Customer is likewise deemed to acknowledge these GTCs as binding with respect to future contracts. No standard terms and conditions of the Customer which deviate herefrom shall be deemed incorporated into the Parties' contract, whether by tacit acceptance or reference to letters of the Customer containing such terms and conditions or through acceptance of an offer or performance of services.
- 1.3 The terms in this EULA are completed by further legal terms:
  - [General Terms and Conditions of Cubeware GmbH](#)
  - [Cubeware CSP C8 Licensing Reference](#)
  - [Hard- and Software requirements](#)

**2. License Grant**

- 2.1 The software covered by this agreement (including documentation) is protected by German copyright law and international treaties. Rights to commercial utilisation of the software are held by Cubeware and/or third parties.
- 2.2 Cubeware grants to the Customer the non-exclusive, indefinite right to use the software acquired from Cubeware in its business operations subject to these contractual terms. The Customer may only create databases for its own use pursuant to the provisions of the relevant agreement.
- 2.3 In addition, to the extent Cubeware is the manufacturer of the software, Cubeware grants to the Customer the non-exclusive, indefinite right to use the software acquired from Cubeware in the business operations of such enterprises, and subject to the provisions of the applicable contractual provisions, as are affiliated with the Customer within the meaning of the German Stock Corporation Act ("AktG") at the time of the conclusion of such agreement ("Group Companies"). To the extent third parties are the manufacturers of the Software, the grant of a license to Group Companies requires a separate agreement.
- 2.4 To the extent not otherwise agreed, the license is subject to the full payment of the purchase price.
- 2.5 To the extent Cubeware is the manufacturer of the software, and to the extent not agreed otherwise, the Customer is required to activate the software via Cubeware's website in order to be able to use the software.
- 2.6 The option exists to agree with Cubeware to place the source code to the software purchased into escrow. If the Customer desires the escrow option, then this will be done on the basis of a separate escrow agreement to be made between the Customer, Cubeware and an escrow agent to be designated by Cubeware. The escrow agreement to be made will govern the right to use the source code in the event of disclosure thereof.

**3. Scope of Use**

- 3.1 The Customer may use the Software on any hardware that supports the Software.
- 3.2 The actual scope of use of each product shall be determined by the type and number of licenses acquired according to the terms in the **licensing reference of Cubeware**.
- 3.3 Any use beyond the purposes set forth above, especially modification, decompiling or reengineering is not permitted to the extent not provided otherwise in Sec. 69d or 69e of the German Copyright Act ("UrhG"). Cubeware reserves the right to specify supplemental provisions in the additional contractual license terms.

**4. Software Protection**

**4.1 Rights of Reproduction and Access Protection**

- 4.1.1 The Customer may only reproduce the delivered software to the extent as reproduction is indispensable for the use of the software. Necessary reproductions include the installation of the software from the original data carrier to the mass storage of the hardware used, as well as the loading of the software in the working memory, the loading display and running of the software and other related saving processes related to the proper use of the software.
- 4.1.2 In addition, the Customer may prepare one reproduction for back-up purposes. If for reasons of data safety or for the quick reactivation of the computer system after a total failure the regular back-up of the entire computer system including all data and all software used is indispensable, then the Customer may prepare back-up copies in the strictly essential amount. The back-up copies shall be used exclusively for archival storage.
- 4.1.3 The Customer shall not prepare any further reproductions, including write-out of the software code to printers as well as furnishing photocopies of additional documentation(e.g. sample scripts for the Cubeware Importer).
- 4.1.4 The Customer may sell or gift the software in total (including in particular documentation and including any software acquired at a later date or received via maintenance services) permanently to third parties if
  1. The Customer has provided written notice to Cubeware setting out the software to be transferred, the date of the transfer and the third party to which the software is to be transferred;
  2. If the Customer has declared to Cubeware in writing that it will completely and finally terminate its use of the software at the latest at the time of transfer; and
  3. If the Customer provides to Cubeware a written declaration from the third party to whom the software is transferred in which such third party has accepted the application of the Standard Terms and Conditions for Use of Software of Cubeware GmbH in the place of the Customer.

The temporary or partial transfer of a license to a third party or the transfer of a license to multiple third parties is prohibited. In particular renting, lending or leasing the software to third parties is prohibited. A separate agreement with Cubeware shall be required for this type of use.

In the case of a transfer by means of a sale or a gift, the Customer shall provide to the third parties all copies of the software including back-up copies if applicable or destroy any such software and/or back-up copies not transferred. The Customer is no longer authorised to use the software from the time of the transfer to the third party. The Customer is obliged to completely delete the software from its hardware.

- 4.1.5 Removal of a copy protection or similar protection routines is only allowed if such protection routine should impair or prevent the trouble-free use of the software. The Customer is under the obligation to prove that trouble-free use is impaired or prevented by the protection routine.
- 4.1.6 The use of the licensed software in form of an ASP model (Application Service Providing) or SaaS model (Software as a Service), hosting-services or for rent is not allowed. For this type of use separate contractual regulations have to be agreed with Cubeware.
- 4.2 Copyright, Trademark and Origin Notices**
- 4.2.1 The Customer does not have the right, other than in the copyright notice, to use the company name or registered trademarks of Cubeware. The Customer may, however, mention in the customary way that the software was developed, manufactured and distributed by Cubeware, the mentioning of the trademark Cubeware having to be marked as customary with an "®", i.e. for example as follows: Cubeware®.
- 4.2.2 Copyright notices, serial numbers and origin notices, as well as other features used for purposes of identifying the programme may not be removed or modified.
- 4.3 The Customer shall keep updated and archive the documentation provided to it, as well as any modifications communicated to it in written form or on the telephone, or other communications referring to contractual performance.
- 4.4 **Securing the Product Against Unauthorised Access by Third Parties**  
The Customer is obligated to prevent unauthorised access by third parties to the software as well as the documentation by taking appropriate technical and organisational measures. The delivered original data carriers as well as back-up copies, if any, shall be safeguarded at a place secured against unauthorised third-party access. The Customer's employees shall be informed explicitly to comply with these contractual conditions as well as the provisions of copyright law.

## **5. Liability**

- 5.1 Cubeware shall bear liability without contractual limitation according to applicable law
1. for losses based on a breach of an express warranty assumed by Cubeware;
  2. for losses due to intentional acts or omissions;
  3. for losses based on fraudulent concealment of any defects by Cubeware;
  4. for losses arising from harm to life, limb or health, which are based on an intentional or negligent breach of Cubeware's obligations or otherwise based on intentional or negligent conduct of a statutory agent or vicarious agent of Cubeware;
  5. with respect to losses other than those listed under 5.1.4, where such are based on an intentional or grossly negligent breach by Cubeware or otherwise on intentional or grossly negligent conduct of a statutory agent or vicarious agent of Cubeware;
  6. under the German Product Liability Act.
- 5.2 In cases other than those listed in sub-sec. 5.1 hereof, Cubeware's liability shall be limited to compensation for such losses as are typical for the contract and foreseeable, provided that the loss is based on a negligent breach of material obligations by Cubeware or by its statutory agent or vicarious agent. Such obligations shall be deemed 'material' where their performance is the prerequisite to proper performance of the contract, and where a Customer regularly relies and is entitled to rely on compliance with such obligations.
- 5.3 In all cases other than listed in sub-secs. 5.1 and 5.2 hereof, Cubeware hereby disclaims all liability for negligence.
- 5.4 The defence of contributory negligence shall remain unaffected by the foregoing.
- 5.5 The foregoing provisions on limitation of liability shall apply to all contractual and extra-contractual claims for damages against Cubeware, irrespective of their legal basis, and shall apply mutatis mutandis with respect to Cubeware's liability for reimbursement of frustrated expenditures.

## **6. General provisions**

- 6.1 Contracts with Cubeware are governed by the law of the Federal Republic of Germany, but excluding application of the United Nations Convention for the International Sale of Goods and excluding the German choice-of-law rules of international private law.
- 6.2 Unless otherwise agreed, the place of performance for provision of goods and services and for payment shall be Cubeware's registered office. Exclusive jurisdiction with respect to all disputes arising directly or indirectly from this contractual relationship with merchants, legal entities under public law or special fund entities under public law shall lie with the courts at Cubeware's registered office; at its option, Cubeware shall also be entitled to issue proceedings in the courts at the Customer's registered office.
- 6.3 Amendments and addenda to the terms of the Parties' contracts must be recorded in writing for evidentiary purposes. The foregoing also applies to any derogation from this clause. Either Party may demand that any amendment or addendum with respect to the Parties' contractual agreements be recorded in writing.
- 6.4 Notices and declarations to be given by the Customer to Cubeware (e.g. deadlines, defect, dunning, rescission, reduction and termination notices etc.) shall only be effective if made in writing. The requirement for the written form is deemed satisfied by facsimile or e-mail transmission by telecommunications media and – in the case of a contract – by exchange of letters. In all further and other respects, sec. 127 (2) German Civil Code shall not apply.
- 6.5 If any of the provisions of these Terms should be or become ineffective or unenforceable as a whole or in part, the effectiveness or the enforceability of the remaining provisions of these Terms shall not be affected thereby. To the extent that the contractual terms contain gaps, then for purposes of filling such gaps the Parties shall be deemed to have agreed to such legally valid provisions as the Parties would have made in light of their commercial objectives if they had been aware of the contractual gaps at the time of signing these terms.